IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION NO.231 OF 2006

M/s.Premium Intertrade Pvt.Ltd. and another .. Petitioner
v/s.
Union of India and others .. Respondents

Mr.Madhur Baya for the petitioner.

Mr.B.A.Desai, Additional Solicitor General of India with Mr.P.S.Jetley for the respondents.

CORAM : R.M. LODHA &
J.P.DEVADHAR, JJ.

DATED : 18TH MARCH, 2006.

P.C.

On 6.6.2003, the Commissioner of Customs (Exports), passed an order of attachment of the properties being Flat No.6/1, `A' Wing, Lloyds Garden, Prabhadevi, Mumbai and Flat No.6/2, `A' Wing, Lloyds Garden, Prabhadevi, Mumbai in exercise of his power under sub-clause (ii) of clause © of Section 142(I) of the Customs Act, 1962 read with Customs (Attachment of Property of the Defaulters for Recovery of Government Dues) Rules, 1995. The present petitioners M/s.Premium Intertrade Pvt.Ltd. and Smt.Vinita Lakhotia claim to be the owners of Flat Nos.6/1 and 6/2 respectively,.

Aggrieved by the order of attachment, they preferred appeal before the Commissioner of Customs (Appeals) under section 128 of the Customs Act, 1962. By the order dated 21.11.2003, the Commissioner of Customs (Appeals) dismissed the appeal. In the notes for guidance appended to the order dated 21.11.2003, the Commissioner of Customs (Appeals) mentioned that an application for revision under section 129 DD of the Customs Act, 1962 shall lie with the Joint Secretary to the Government of India, Ministry of Finance, Department of Revenue, New Delhi and that the revision application may be made within three months from the date of communication of the order as provided in section 129 DD(2). It appears that the petitioners acted on the notes for guidance and preferred revision before the Joint Secretary to the Government of India, Ministry of Finance, Department of Revenue, New Delhi. However, the said revision has been dismissed by the Joint Secretary to the Government of India as not maintainable by the order dated 25.7.2005.

2. The learned counsel for the petitioners submits that in view of the earlier order passed by the Customs, Excise and Gold (Control) Appellate Tribunal, West Regional Bench at Mumbai (for short `Tribunal') on 30th May, 2000, the appeal was not maintainable in the Tribunal under section 129A of the

Customs Act and the Joint Secretary committed error in rejecting the revision application under section 129D as not maintainable.

3. Section 128 of the Customs Act provides for appeal to the Commissioner (Appeals) by any person aggrieved by any decision or order passed under the Customs Act by an officer of customs lower in rank than the Commissioner of Customs. The order passed on 6.6.2003 by the Assistant Commissioner of Customs in exercise of his powers under section 142 of the Customs Act is appealable under section 128 of the Customs Act, 1962 is not in doubt. That the appeal that was preferred by the petitioners under section 128 aggrieved by the order dated 6.6.2003 was disposed of by the Commissioner (Appeals) under section 128A is also beyond doubt. Section 129A provides for appeals to the Appellate Tribunal by any person aggrieved interalia, by an order passed by the Commissioner of Appeals under section 128A. Proviso appended thereto provides that no appeal shall lie to the Appellate Tribunal in clause (b) if such order relates to the cases set out in clauses (a), (b) and (c). The appeal that was decided by the Commissioner of Appeals under section 128A did not relate to any goods imported or exported as baggage nor any goods loaded in a conveyance for importation into India nor related to payment of drawback as

provided in Chapter X and the rules made thereunder. Thus, it is clear that the order passed by the Commissioner of Appeals under section 128A on 21.11.2003 is appealable under section 129A of the Customs Act, 1962. However, it appears that the petitioners got misguided by the notes for guidance appended to the order passed by the Commissioner of Customs (Appeals) wherein it was mentioned that an application or revision under section 129DD of the Customs Act, 1962 shall lie from that order. The confusion with the petitioners' also could have been due to the earlier order passed by the Tribunal as noticed above.

4. It would be, thus, seen that the order passed by the Joint Secretary to the Government of India on 25.7.2005 holding the revision not maintainable under section 129DD of the Customs Act, 1962 against the order dated 21.11.2003 does not suffer from any legal infirmity.

5. Since the petitioners were misguided by the notes for guidance appended to the order dated 21.11.2003 passed by the Commissioner of Customs (Appeals), the petitioners shall now be at liberty to file appeal to the Appellate Tribunal under section 129A of the Customs Act, 1962. The petitioners shall also be at liberty to apply for condonation of delay in filing the appeal for the reasons indicated above.

6. With the aforesaid observations, writ petition is dismissed.

7. All contentions raised in the writ petition are kept open to be agitated in the appeal before the Tribunal under section 129A.

(R.M.LODHA, J.)

(J.P.DEVADHAR, J.)